



2004 Proposed Resolutions And Supporting Position Statements

**Proposed for Adoption by the Members of the
Colorado River Water Users Association**

**Thursday, December 11, 2003
Annual Business Meeting**

The Colorado River Water Users Association is a non-profit, non-partisan organization, formed to plan, study, formulate and advise on ways to protect and safeguard the interests of all who use the Colorado River.

12/10/2003 - Resolution Committee Recommended Draft

- h) **Periodic Review:** The Act shall provide for periodic review of species listings, critical habitat designations and recovery plans to determine if such actions continue to be necessary for the continued existence of a species.
 - i) **Reconsideration:** When petitioned by an affected tribe, state legislature, or Governor, the federal government shall take immediate steps to review, document, reconsider and, where appropriate, rescind previous action in the administration of the Act. Such actions shall include public hearings in each affected area.
 - j) **Indirect Effects:** Review of indirect effects of the proposed Federal action shall be limited to those effects which would not occur but for the proposed Federal action and are reasonably certain to occur.
 - k) **Public participation:** Activities such as listing, critical habitat designation, development of reasonable and prudent alternatives, recovery plans and efforts to recover the species shall be open to public participation. The federal government shall fully inform the public, and other governmental entities, of the social and economic costs and benefits of designating critical habitat.
3. **Property Rights:**
- a) **No Involuntary Appropriation:** The Act shall not be used or construed to permit or justify the involuntary appropriation of property of others, including contractual rights in existence at the time of a listing of a species for any purpose, including but not limited to, a taking of a property right for purposes of mitigating federal action under the Act.
 - b) **Fair Compensation:** The federal government shall fairly and timely compensate property owners when the Act results in a taking of private property.
 - c) **Federal "Standing" for Litigation:** Individuals or entities whose property or economic interest may be adversely impacted by actions taken under the Act shall have standing as parties in any litigation under the Act and shall have "applicant" status in any action under the Act, including Section 7 consultations.
4. **Interrelation With Other Laws:** The Act shall be carried out in a manner consistent with other federal laws, authorities and purposes, including the trust responsibility of the United States. The Act shall not abrogate, supersede, supervene or supplant the United States Constitution, Bill of Rights, other federal law or state law regarding water or other property rights.

**Resolution No. 2004-2
CLEAN WATER ACT**

The Clean Water Act (CWA) shall not be utilized to regulate anything other than the discharge of pollutants to waters of the United States.

States Rights:

1. The CWA shall not supersede, abrogate or impair state water rights.

12/10/2003 - Resolution Committee Recommended Draft

2. No water rights arise in the United States or any other person by virtue of the CWA.
3. No federal agency or officer shall redefine, limit or prohibit those uses of water authorized by state law as beneficial.
4. No provision of the CWA shall prohibit or limit the development of water legally allotted to a state.
5. No provisions of the CWA shall restrict any state in the creation or amendment of its water law or the judicial or administrative principles for making water allocations.
6. States shall have primary responsibility for identifying and administering both voluntary and involuntary Best Management Practices (BMPs) associated with the CWA. Federal funding and assistance should be made available for implementing BMPs.
7. States shall be allowed to develop and administer water quality standards appropriate for ephemeral and/or effluent dominated streams taking into account the intermittent nature and other physical limitations of such streams, the net environmental benefit associated with the continued discharge of water to such streams, and the need to protect downstream beneficial users.
8. States shall have the prerogative of identifying and implementing any anti-degradation policy.
9. EPA shall defer to state classifications for intrastate bodies of water and the state established water quality standards for the protection of such classifications.
10. States shall determine whether manmade water conveyance systems are subject to CWA requirements, and if so, the appropriate criteria and classifications applicable to such systems.
11. The diversion and delivery of water through a water conveyance system from one stream or water body to another, without the addition of any pollutant, should not require an NPDES permit under Section 402 of the CWA. States should determine the best method to control, if necessary, pollutants contained in water transported by water conveyance structures, including non-point source control methods.
12. States shall exercise primary authority in meeting the requirements of Section 303(d) of the CWA, with specific reference to: (i) the identification of impaired water bodies; (ii) the prioritization of impaired water bodies; (iii) the establishment of TMDLs; (iv) the implementation of TMDLs; and (v) the selection of appropriate mechanisms for addressing non-point sources of pollutants. Water bodies shall not be listed where Section 303(d) impairment is determined to be caused by "pollution" as distinct from "pollutants."
13. The Environmental Protection Agency (EPA) may provide scientifically sound technical guidance upon flow, biological nutrient and wildlife criteria, but shall defer to the states in their adoption and implementation.

Section 404 of the CWA:

1. Deference shall be accorded to the local, state or tribal governmental unit, or other sponsoring individual or organization regarding the need for, timing, and the siting of a CWA § 404-regulated project.

12/10/2003 - Resolution Committee Recommended Draft

2. In considering the project purpose and need for water development projects proposed by states, tribes or other local governmental subdivisions, the purpose and need shall be defined by the project sponsor. The purpose and need as identified by the Federal agency shall incorporate the sponsor's purpose and need in its entirety.
3. The EPA's authority under § 404 (c) of the Act shall be limited to identifying and directing unresolved concerns to the Secretary of the Army for a final decision.
4. The Corps of Engineers shall adopt simplified procedures for issuing general and nationwide permits and for transferring 404 permit authority to states. The scope of actions covered under general or nationwide permits shall not be narrowed from that existing on January 1, 1997.
5. Section 404 shall provide for a simplified and expeditious permit process to help facilitate recovery from Federally-Declared Disasters.
6. The EPA and the U.S. Fish and Wildlife Service shall establish guidelines and objective measures for mitigation, and defer to the Corps of Engineers on matters of engineering, economics, flood control and other areas within the Corps' expertise.
7. All relevant agencies including the EPA shall participate in the pre-application consultations and shall work constructively with applicants to resolve problems that arise during the permit process.
8. Section 404 shall provide for routine maintenance activities to be covered by the initial permit process and allow for automatic renewal so long as the activity remains substantially the same.
9. Section 404 shall provide an exemption for construction of emergency water supply projects and any incidental fallback.

Non-Point Source:

1. The CWA shall encourage necessary, cost effective and reasonable voluntary measures to control non-point source discharges including the use of BMPs and pollutant trading.
2. The EPA shall consult with the appropriate agencies within the Departments of the Interior and Agriculture and all affected state, tribal and local entities before identifying non-point source control measures.
3. Non-point source controls shall be integrated, to the extent determined appropriate by state and local entities, with watershed management programs designed to achieve overall progress towards water quality objectives in that watershed.
4. Non-point sources shall not be subject to Section 401 certification review requirements.

Federal Mandates:

1. The CWA shall allow for adequate phase-in time for new limitations or standards so as not to impose unnecessary or substantial hardships on regulated entities or their constituents unless dictated by substantiated societal health and safety considerations.
2. Actions required by the CWA shall be supported by adequate federal funding.

12/10/2003 -- Resolution Committee Recommended Draft

3. No action shall be taken under the CWA until a peer-reviewed benefit cost analysis demonstrates that the benefits of the proposed action are clearly greater than the costs.
4. No private property shall be taken under the CWA without just compensation to the owner, as required by the Fifth and Fourteenth Amendments to the Constitution of the United States.

Position Statement
Clean Water Act
 (Resolution 2004-2)

The issue addressed in item 11 of the "States Rights" section of Resolution 2004-2 is exemplified by the case currently before the United States Supreme Court designated as South Florida Water Management District vs. Miccosukee Tribe of Indians. The appellees in this case claim that the South Florida Water Management District (SFWMD) is required to obtain a federal NPDES permit under the federal CWA in order to transfer water from one source to another. In this specific instance, the SFWMD moves water from a basin to a water protection area to provide flood protection and protect the water supply for the residents of the South Florida region.

Currently more than four dozen national and regional groups including numerous Western states and their agencies, have joined in support of the SFWMD, whose authority concerning water conveyance is being challenged. The U.S. Congress and the Supreme Court have supported the rights of states in matters of water allocation and use, including transfers for beneficial consumptive use. The negative economic and social implications of imposing an NPDES permit on these transfers could be enormous and could be extremely disruptive to the tens of millions of western residents who depend upon the extensive water infrastructure conveying water resources across the vast distances of the West.

Resolution No. 2004-3
RECLAMATION

1. Reallocation of Project Purposes and Project Operation Changes.

Project benefits shall not be reallocated without the consent of project beneficiaries. Beneficiaries shall not pay for project benefits reallocated to another use. Project operations changes shall not impair existing contracts or water rights under state law.

2. Environmental Mitigation

The federal government shall pay for environmental enhancement and mitigation. Existing contracts shall not be surcharged for environmental enhancement or mitigation.

3. Water Conservation

"Conserved water" shall not be reallocated in violation or derogation of existing contracts or water rights.

4. Water Service Contract Renewal

Water service contracts shall be renewed for the same quantity of supply as has been historically beneficially used and shall provide the same availability to the water as has been historically enjoyed. Water service contracts shall be renewed for the maximum allowable term.